

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Price Changes
Rates of General Applicability

Docket No. CP2016-9

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING CHANGES IN RATES OF
GENERAL APPLICABILITY FOR COMPETITIVE PRODUCTS

(November 3, 2015)

The Public Representative hereby provides comments pursuant to Commission Order No. 2767 concerning proposed changes in Postal Service rates of general applicability for competitive products.¹ In Order No. 2767, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service Notice of rate changes filed pursuant to 39 C.F.R. § 3015.2.²

Attached to the Postal Service's Notice is Governors' Decision No.15-1 that establishes the rate changes, provides a statement of explanation and justification, and orders the changes into effect on January 17, 2016.³ The Governors' Decision also states that the changes comport with section 3633(a) of title 39 of the U.S. Code and 39 C.F.R. § 3015.7(c). With its Notice, the Postal Service also filed public and non-public versions of supporting materials that include FY2016 projected volume, revenue and cost data as well as price adjustment calculations.

¹ Notice and Order Concerning Changes in Rates of General Applicability for Competitive Products, October 19, 2015 (Order No. 2767).

² Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 15-1, October 16, 2015 (Notice).

³ Notice at 1; Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products, September 17, 2015 at 6 (Governors' Decision No. 15-1).

COMMENTS

Price changes for competitive products are reviewed pursuant to 39 U.S.C. § 3633(a) and Commission regulations under 39 CFR part 3015. These statutory and regulatory provisions require each competitive product to cover its attributable costs, prohibit the subsidization of competitive products by market dominant products, and require that competitive products collectively make an appropriate contribution to the recovery of the Postal Service's total institutional costs. 39 U.S.C. § 3633(a).

The Public Representative has reviewed the documentation filed in this docket. Based upon that review, the Public Representative concludes that the proposed changes and rates contained in Governors' Decision No.15-1 appear to: enable each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2); not subsidize market dominant products (39 U.S.C. § 3633(a)(1); and, generate a minimum of 5.5 percent to institutional costs, thereby fulfilling the requirement of 39 U.S.C. § 3633(a)(3), as implemented by 39 C.F.R. § 3015.7(c). However, the Public Representative has several concerns regarding certain aspects of the Postal Service's proposal. They are discussed below.

I. First-Class Package Service

The Postal Service proposes to eliminate the presort categories for First-Class Package Service, essentially turning First-Class Package Service into a single-piece product. The proposed changes to First-Class Package Service, establishes a product remarkably similar to First-Class Mail Parcels product from the market dominant product list. The greatest difference between the two⁴ is that to be eligible for First-Class Package Service prices, postage must be "paid by one of the following methods:

- a. Registered end-users of USPS-approved PC Postage products when using a qualifying shipping label managed by the PC Postage system.
- b. USPS-approved IBI postage meters that electronically transmit transactional

⁴ In its response to Chairman's Information Request No.1 (CHIR No. 1), Question 4a, the Postal Service also points to the difference in entry point (retail counter vs. Business Mail Entry Unit) and maximum weight as distinguishing First-Class Package Service from the First-Class Mail Parcels product.

data to USPS.

c. Permit imprint.

d. Permit holders using Merchandise Return Service (MRS) for First-Class Package Service mailpieces when all MRS requirements are met (505.3.0).⁵

The difference in eligible payment methods appears to distinguish between business mailers and retail customers.

On August 26, 2015, the Commission expressly prohibited the Postal Service from removing the First-Class Mail parcels from the market dominant product list and adding identical services to the existing First-Class package service product appearing on the competitive product list.⁶ The Commission found the Postal Service failed to demonstrate the dual requirements of 39 U.S.C. § 3642(b),

“[b]ecause the Postal Service has not sufficiently provided evidence that it lacks the ability to raise the price of Single-Piece, First-Class Mail Parcels significantly without risk of losing significant business to a competitor.” *Id.* at 16.

Despite the similarities between First-Class Mail Parcels and the proposed First-Class Package Service price categories, changes to the First-Class Package Service product are not contrary to the Commission’s decision regarding First-Class Mail Parcels, because the more restrictive payment options for First-Class Package Service, essentially limits its use to commercial customers. However, if the Postal Service were to allow stamped mail to be mailed at First-Class Package Service prices, the Postal Service would in effect add a market-dominant product to the competitive product list.

The Public Representative is concerned that although eligible form of payment is a distinguishing feature of First-Class Package Service, it does not appear in the Mail Classification Schedule (MCS). The Postal Service could turn First-Class Package Service into basically First-Class Mail Parcels by simply changing the eligibility requirements in the Domestic Mail Manual

While the Postal Service’s instant request does not seek to directly defy Order No. 2686, it could produce a similar result. The Commission should add the payment

⁵ Mailing Standards of the United States Postal Service Domestic Mail Manual, Prices and Fees for First-Class Package Service, section 1.3, <http://pe.usps.com/cpim/ftp/manuals/dmm300/283.pdf>.

⁶ Order No. 2686 - Order Denying Transfer of First-Class Mail Parcels to the Competitive Product Category, August 26, 2015, at 1 (Order No. 2686).

eligibility information for First-Class Package Service to the MCS to ensure that the Postal Service does not circumvent 39 U.S.C. § 3642..

The Postal Service states in its response to CHIR No. 1, Question 4b, that it would not be opposed to identifying First-Class Parcel Service as a commercial offering in the MCS. The Public Representative urges the Commission to do that by including the eligible payment information.

II. Costing of Competitive Products May Be Likely Flawed

The Postal Service proposes sizable increases in price for most of their competitive products: Priority Mail Express (15.6 percent), Priority Mail (9.8 percent), Parcel Select Lightweight (23.5 percent), First-Class Package Service (12.8 percent), Standard Post, formerly Retail Ground (10 percent) GXG (7.1 percent), and Priority Mail Express International (PEI) (11.6 percent), Priority Mail International (10.2), First-Class Package International Service (21.6 percent).

The Department of Justice's Horizontal Merger Guidelines("Guidelines") uses a test to help evaluate whether a merger could increase the market power of combined entities.⁷ That test may also be used to evaluate whether the Postal Service's proposed price change reflects its ability to exercise market power. Under the Guidelines, a firm's ability to implement a "small but significant and non-transitory increase" ("SSNIP") is an indication of market power. The Guidelines often use a SSNIP of five percent of the price paid by customers for one year. Guidelines at 10.⁸

The Postal Service's proposed increases for several products far exceed this value. If it is likely it will be able to sustain these substantial increases in proposed prices the Postal Service will have exercised market power raising questions about the placement of these products on the Competitive Product List.

Assuming the Postal Service is acting as a rational agent, it follows that the Postal Service does not expect to lose so much volume to competitors as to render the price increase unprofitable. However, since both UPS and FedEx offer similar products,

⁷ See Horizontal Merger Guidelines, United States Department of Justice and the Federal Trade Commission, August 19, 2010 (Guidelines).

⁸ More specifically, if a firm passes the SSNIP test, it means it is able to increase the price of a product in the product and geographic markets under consideration by five percent or more, for at least one year, without engendering competition which makes the product unprofitable.

and actively compete for parcel volume the PR does not believe the price increases represent the exercise of market power. A more likely explanation is that the Postal Service has been underpricing its competitive products.

Based on accepted costing methodologies, the proposed price increase appears to meet all the requirements of 39 U.S.C. § 3633. These requirements serve to prevent the Postal Service from setting its prices so low that it is competing unfairly. The Postal Service must set prices for competitive products that cover cost and collectively contribute 5.5 percent to institutional costs. These requirements serve as a price floor for the Postal Service's competitive products. The Postal Service has consistently met these requirements under the accepted costing methodology. Ruling out market power as a likely explanation for the Postal Service's ability to increase prices significantly above five percent, the most reasonable explanation for why the Postal Service can increase prices by the proposed amounts is that the current prices are set too low, despite meeting the applicable regulatory standards. Consequently, the Public Representative questions the accuracy of the accepted costing methodology to set a reasonable price floor. It seems likely that the accepted methodology does not attribute all appropriate costs to competitive products. Likewise, the minimum contribution requirement for competitive products collectively (5.5 percent to the Postal Service's institutional costs) may be set too low, which allows competitive products to be priced lower, and earn less, without violating current Commission's rules.

III. Customers' Concerns

Some customers expressed concerns to the Public Representative that the Postal Service's proposed rate increases will force them to absorb greater costs, make postal products much less competitive, and force many to consider moving their patronage to alternative providers. In particular, they assert that eliminating the Priority Express Flat Rate may have a grave effect on shipments of Express Mail. By opting to shift this service to weight/destination based rates, some mailers see the Postal Service as losing what advantage it had (in price) over competitors like FedEx and UPS. Others mailers are concerned that they will lose the capability to apply drop shipping to e-commerce vendors. They caution that the Postal Service's proposed rise in prices and

termination of workshare discount shipping options will end critical discount services, severely impact customers, and reduce the Postal Service's customer base.

CONCLUSION

The Public Representative hereby submits the foregoing comments for the Commissions consideration.

Respectfully submitted,

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